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PATENT

#277

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

INVENTOR:	Tucholski et al.)	EXAMINER:	A. Skapars
SERIAL NO.:	641,394)	ART UNIT:	1104
FILING DATE:	January 15, 1991)	DATE:	October 12, 1993
FOR:	BATTERY WITH TESTER LABEL)		

PROTEST UNDER 37 CFR 1.291

Honorable Commissioner of
Patents and Trademarks
Washington, D.C. 20231

Dear Sir:

Pursuant to 37 CFR §1.291, the undersigned petitioner hereby protests the grant of a patent in connection with the above-identified application. Petitioner also protests the placement of such application in interference with Cataldi et al. U.S. Patent No. 5,059,895 prior to a full and complete examination of patentability of the claims to applicant. This protest is based on information concerning an office action rejecting the same claims in the Cataldi et al. patent.

Applicant was granted a patent in a continuation-in-part of the above-identified application. When the petitioner's associate attempted to obtain a copy of the file of the instant application, he was informed that the application was in the interference branch. As such, petitioner believes that the subject application has been determined to be patentable to the applicant and has been either formally or informally placed in interference with the Cataldi et al. patent.

Petitioner has not been given access to the file of the instant application and has separately petitioned for such access. However, given the relative speed with which

this application has proceeded to the interference branch, petitioner believes that the application was not examined under the same standards currently being applied to the reissue application of Cataldi et al. U.S. Patent 5,059,895, serial no. 07/942,973. All of the claims of the application for reissue of the Cataldi et al. patent were rejected on May 6, 1993 under 35 USC §103 as being obvious from Burroughs et al. U.S. Patent No. 5,015,544 in view of Kiernan et al. U.S. Patent No. 4,723,656 and Parker U.S. Patent No. 4,737,020. Since the instant application of Tucholski et al. copies claims 11-18 and 20-28 of the Cataldi et al. patent, and has a later filing date than Cataldi et al., the claims of the instant application which correspond to the Cataldi et al. claims should also be rejected under 35 USC §103 on the same grounds as given in the Cataldi et al. reissue application.

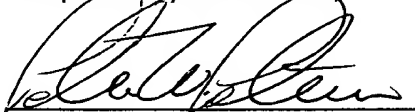
Although there is an opportunity during the initial motion period for an interference party to contest patentability to the other party, it has been the usual practice of the U.S. Patent and Trademark Office that patentability to the applicant be determined prior to the interference. "The examiner shall determine whether there is interfering subject matter claimed in the application and the patent *which is patentable to the applicant* If the examiner determines that there is any interfering subject matter, an interference will be declared." (emphasis added) 37 CFR §1.607(b).

In summary, assuming that the instant Tucholski et al. application has not been subjected to the same examination as the Cataldi et al. reissue application and has not been rejected under 35 USC §103 on the same grounds, petitioner hereby protests the determination that such claims are patentable to the applicant and the declaration of interference with Cataldi et al. U.S. Patent No. 5,059,895.

For the convenience of the PTO, petitioner hereby encloses a copy of the office action dated May 6, 1993 in Cataldi et al. reissue application no. 07/942,973.

This protest is being filing in duplicate in case applicant's attorney has changed.

Respectfully submitted,



Peter W. Peterson
Reg. No. 31,867

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service on the date indicated below as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231

Name: Peter W. Peterson Date: 10/12/93 Signature: Peter W. Peterson

CERTIFICATE OF SERVICE

The accompanying "Protest Under 37 CFR 1.291" was served on Randall G. Litton, of Price, Heneveld, Cooper, DeWitt and Litton, 695 Kenmoore, S.E., P. O. Box 2567, Grand Rapids, Michigan 49501 by first class mail, postage prepaid, on the 12th of October, 1993.

By: 
Peter W. Peterson